

REMARKS/ARGUMENTS

Applicants thank the Examiner for his careful review of this application. Claims 1, 12-13, 15-20, 22-23, 33, 35-36, 38, 40-41, 46, 48-52, and 54 have been rejected. Claims 1, 23, and 46 have been amended. Applicants respectfully request entry of the above amendments in view of the following remarks submitted in support thereof.

DISCUSSION OF REJECTION OF CLAIMS 1, 12, 23, 33, 46, 48 AND 54

UNDER 35 U.S.C. § 103(a)

In Section 2 of the Final Office Action, the Examiner rejected Claims 1, 12, 23, 33, 46, 48 and 54 under 35 U.S.C. § 103(a) as being unpatentable over Joffe et al. (US 6, 185, 619 B1) in view of Adams (US 6,055,568).

The Examiner's rejection is respectfully traversed. The Examiner has characterized the suggestion or motivation to combine Joffe et al.-Adams as "to implement the search process of Joffe in the peer-to-peer architecture of Adams is to allow a search to be performed by a large number of systems in which the load on the network is widely distributed and balanced, thereby resulting in better performance and response times."

Applicants have amended independent Claim 1 to positively recite that the profile characterizing a computer includes, at a minimum, "information on the number of files contained within the computer." Applicants have amended independent Claim 23 to positively recite that the profile characterizing a computer includes, at a minimum, "information on an amount of content available to the network on the at least one computer." Applicants have amended independent Claim 46 to positively recite that the profile

characterizing a computer includes, at a minimum, “information on an amount of content available to the network on the at least one computer.”

Applicants respectfully request the Examiner to read the claims presented in the present application anew in view of the above amendments and the following remarks submitted in support thereof. Applicants have re-read the cited references and nothing in the cited references teaches a profile characterizing a computer that includes “information on a number of files within” the computer, as recited in independent Claim 1. Similarly, nothing in the cited references teaches a profile characterizing a computer that includes “information on an amount of content available to the network on” the computer, as recited in independent Claims 23 and 46.

Specifically, Joffe et al. teach balancing the process load on network servers and assigning requests made by clients among the multiple network servers (*see* Abstract) based purely on the collection of “routing time” (*see* Col. 12, lines 8-15) and “current load” (*see* Col. 12, lines 16-19) information. Adams teaches dynamically re-configuring network interconnections to achieve a more efficient utilization of the networks resources in light of intercommunication traffic (*see* Abstract) based purely on the collection of “current latency” (*see* Col. 4, lines 9-23) and “current work load” (*see* Col. 4, lines 28-49) information. Thus, the asserted combination of Joffe et al., in view of Adams fails to teach each and every element and limitation of Applicants’ independent claims 1, 23, and 46, and likewise fail to teach or suggest each and every element of the claims depending therefrom.

Additionally, it would be counter intuitive to one of ordinary skill in the art to apply the principals taught in Joffe et al. and Adams to the claims of the present application. The teachings of Joffe et al. and Adams, as previously mentioned, do not include the collection of information related to the *number of files* or the *available content* existing on a computer, as

recited in independent Claims 1, 23 and 46. In the cited art, a particular network computer can be selected for reconfiguration (as taught by Adams) or selected in to response to a user request (as taught by Joffe et al.) *irrespective* of any files or content that may exist on the computer. *Load balancing* is the basic goal of the cited art, i.e. a computer is simply selected based on how “loaded” or “busy” it might be at a particular time. Logically, therefore, one skilled in the art reading the teachings of the prior art would not be directed to look at information associated with the number of files or content to make a load balancing decision. The teachings of the cited prior art references ignore the content and simply look to how loaded a system may be at a particular point in time.

In order to establish a prima facie case of obviousness, the rejection must demonstrate that (1) the cited references teach all of the claimed elements and limitations; (2) there is a suggestion or motivation in the prior art to modify or combine the reference teachings; and (3) there is a reasonable expectation of success. MPEP § 2143; *In re Vaeck*, 20 USPQ2d 1438 (Fed. Cir. 1991).

Accordingly, Applicants submit that Claims 1, 12, 23, 33 46, 48 and 54 are patentable under 35 U.S.C. § 103(a) over Joffe et al. in view of Adams. Applicants therefore respectfully request reconsideration, and withdrawal of the § 103 rejections.

DISCUSSION OF REJECTION OF CLAIMS 13, 16, 17, 19-20, 35, 38, 40-41, 49-50 AND 52 UNDER 35 U.S.C. § 103(a)

In Section 3 of the Final Office Action, the Examiner rejected Claims 13, 16, 17, 19-20, 35, 38, 40-41, 49-50 and 52 under 35 U.S.C. § 103(a) as being unpatentable over Joffe et

al. in view of Adams in further view of Hirosawa et al. (U.S. Patent No. 6,718,391).

Applicants traverse the rejections and request reconsideration.

For at least the same reasons the independent Claims 1, 23, and 46 are patentable as described above, Applicants submit that Claims 13, 16, 17, 19-20, 35, 38, 40-41, 49-50 and 52 are patentable under 35 U.S.C. § 103(a) over Joffe et al. in view of Adams in further view of Hirosawa et al. Applicants therefore respectfully request reconsideration, and withdrawal of the § 103 rejections.

DISCUSSION OF REJECTION OF CLAIMS 18 AND 36

UNDER 35 U.S.C. § 103(a)

In Section 4 of the Final Office Action, the Examiner rejected Claims 18 and 36 under 35 U.S.C. § 103(a) as being unpatentable over Joffe et al. in view of Adams in view of Hirosawa et al. in further view of Scharber (U.S. Patent No. 6,542,964). Applicants traverse the rejections and request reconsideration.

For at least the same reasons the independent Claims 1 and 23 are patentable as described above, Applicants submit that Claims 18 and 36 are patentable under 35 U.S.C. § 103(a) over Joffe et al. in view of Adams in view of Hirosawa et al. in further view of Scharber. Applicants therefore respectfully request reconsideration, and withdrawal of the § 103 rejections.

DISCUSSION OF REJECTION OF CLAIMS 15 AND 51 UNDER 35 U.S.C. § 103(a)

In Section 5 of the Final Office Action, the Examiner rejected Claims 15 and 51 under 35 U.S.C. § 103(a) as being unpatentable over Joffe et al. in view of Adams in view of Hirosawa et al. in further view of Ishikawa et al. (JP 11015707 A). Applicants traverse the rejections and request reconsideration.

For at least the same reasons the independent Claims 1 and 46 are patentable as described above, Applicants submit that Claims 15 and 51 are patentable under 35 U.S.C. § 103(a) over Joffe et al. in view of Adams in view of Hirosawa et al. in further view of Ishikawa et al. Applicants therefore respectfully request reconsideration, and withdrawal of the § 103 rejections.

DISCUSSION OF REJECTION OF CLAIM 22 UNDER 35 U.S.C. § 103(a)

In Section 6 of the Final Office Action, the Examiner rejected Claim 22 under 35 U.S.C. § 103(a) as being unpatentable over Joffe et al. in view of Adams in further view of Nagae (US 6,006,248). Applicants traverse the rejections and request reconsideration.

For at least the same reasons the independent Claim 1 is patentable as described above, Applicants submit that Claim 22 is patentable under 35 U.S.C. § 103(a) over Joffe et al. in view of Adams in further view of Nagae (US 6,006,248). Applicants therefore respectfully request reconsideration, and withdrawal of the § 103 rejections.

DISCUSSION OF EXAMINER'S RESPONSE TO ARGUMENTS

In Section 7 of the Final Office Action, the Examiner requests that Applicants “specifically point out where in the specification supporting the feature ‘selecting of the at

least one computer to be the selected computer' is completed independent of search query from the user."

Applicants respectfully submit that support for the claim referred to by the Examiner is found throughout Applicants specification as filed. As previously mentioned in Applicants' Reply to Office Action of February 15, 2005, specific citations include, but are not limited to, page 8, lines 16-17: "Generally, host monitor 220 actively collects up-to-date status information on the hosts within network 100." See also, page 13, lines 4-10, describing collecting data every 5 minutes for network hubs, and less frequently for other hosts. See also, page 13, lines 9-22, describing collecting data every 5 minutes for network hubs, and less frequently for other hosts. See also, page 14 describing various time intervals, and at lines 18-20 the independence of the search query: "This allows the present invention to correctly associate a particular (set of) statistics with the proper host, **for later direction of** (for example) search queries.") (emphasis added). See also, page 15, lines 1-8. Specific citations not submitted in Applicants' Reply to Office Action of February 15, 2005 include, but are not limited to, Figure 4 illustrating collection steps that are distinct from and, not in response to, user request steps. Applicants respectfully submit that no new matter is introduced.

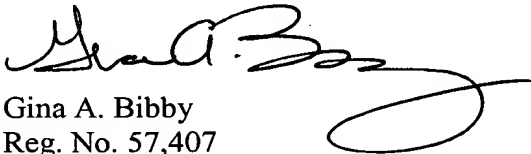
CITED REFERENCES

The references that the Examiner considers pertinent to Applicant's disclosure but does not rely upon have been reviewed. However, it is submitted that none of the references, either taken alone or in combination with each other or the references relied upon, negatively affects the patentability of the present application as defined by the claims.

CONCLUSION

In view of the foregoing, Applicants respectfully request reconsideration of Claims 1, 12-13, 15-20, 22-23, 33, 35-36, 38, 40-41, 46, 48-52, and 54. Applicants submit that all claims are in condition for allowance. Accordingly, a notice of allowance is respectfully requested. If Examiner has any questions concerning the present Amendment, the Examiner is kindly requested to contact the undersigned at (408) 749-6920. If any additional fees are due in connection with filing this amendment, the Commissioner is also authorized to charge Deposit Account No. 50-0805 (Order No. NAPSP280). A duplicate copy of the transmittal is enclosed for this purpose.

Respectfully submitted,
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